IN THE HIGH COURT OF DELHI AT NEW DELHI

CR.P.No.100/2004

Sh. Gauri Shankar & Anr. ... Petitioner
! through: Mr.L.D.Adlakha, Advocate

VERSUS

$ Smt. Lalita Devi & Ors. ... Respondents
^ through: Ms.Sangeeta, Advocate for R-1
Mr. A.P.Aggarwal, Advocate for R-3 & R-4

% **D**ATE OF DECISION: 07-05-2007

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Petitioners are aggrieved by the order dated 11.11.2003 passed by the learned Trial Judge dismissing their application under Order 22 Rule 10 of the Code of Civil Procedure.

2. In brief, petitioners claimed assignment under the original plaintiffs and therefore prayed leave of the court to be substituted as plaintiffs.

3. Relevant facts to be noted for adjudicating the claim of the petitioners are that Late Pandit Durga Dass was blessed with 4 children namely Badri Prasad, Dharma Nand, Lalita Devi and Rekha.

4. On his demise, a dispute has arisen pertaining to property no. 368-373, Kucha Ghasi Ram, Chandni Chowk, Delhi. The two daughters namely Lalita Devi and Rekha claim 25% share each on the ground that the property referred to hereinbefore was the self acquired property of their father. They claim that he bequeathed the same under a will to all four children.

5. The two sisters have filed a suit for injunction against their brothers impleading their mother as a party. They allege that their mother and brothers are threatening to sell the suit property.

6. During the pendency of the suit it appears that the two brothers have executed certain sale deeds on behalf of self and even their sisters, recording in the sale deeds that the sisters have executed a power of attorney in their favour.

7. Petitioner No.1, Gauri Shankar is a tenant in a part of the suit property. So is the status of petitioner no.2, Smt. Sona Thakur.

8. It is not in dispute that Lalita Devi and Rekha had executed a power of attorney in favour of petitioner No.1 constituting him as their attorney in the civil suit filed by them against their brothers and their mother.

9. Gauri Shankar claims that acting under the authorization issued in his favour by Lalita Devi, he has been empowered to deal with Lalita Devi's share in the property. He further states that on 7.7.1983, Lalita Devi executed a registered sale deed in his favour pertaining to her 1/4th undivided share in the suit property.

10. Likewise, Smt. Sona Thakur claims that vide sale deed dated 18.7.1983 Rekha has sold her 1/4th undivided share to her i.e. Smt. Sona Thakur.

11. Before the learned Trial Judge, Rekha Sharma opposed the application stating that Gauri Shankar was appointed as an attorney to prosecute the suit on her behalf and that he has committed breach of trust. She has denied executing any sale deed in favour of any third party.

12. In another proceedings, the two sisters admitted

that they have sold their 1/4th share each in favour of their brothers.

13. In the backdrop of the aforenoted facts, learned Trial Judge has declined to substitute the petitioners as plaintiffs in place of the two sisters i.e. Lalita Devi and Rekha.

14. Learned counsel for the petitioner states that notwithstanding the stand taken by Lalita Devi and Rekha, admittedly sale deeds stand registered in favour of the petitioners and therefore interest of the petitioners would be affected by any adjudication in the suit filed by Lalita Devi and Rekha. Counsel urged that unless petitioners are brought on record, they would not be able to counter the stand taken by Lalita Devi and Rekha.

15. A perusal of Sub Rule 1 of Rule 10 of Order 22 reveals that it is an enabling rule.

16. The rule empowers a successor in interest, if he so elects, to ask for and obtain leave of the court to continue with the suit.

17. But, the sine qua non for said right would be an acceptance by a litigating party that it has transferred or assigned its interest to the applicant.

18. Where the assignment is questioned by the so called

assignor, the person claiming to be the assignee cannot be brought on record for the simple reason, as in the instant case, the complexion of the dispute would get changed.

19. The legal position could be appreciated with reference to the facts of the instant case.

20. Dispute is between two sisters on the one side and their brothers and mother on the other. The sisters claim a right in the suit property alleging that their father, who acquired the property by his labour, had bequeathed 1/4th share each to the two sisters. This claim is being opposed by the brothers and the mother. During pendency of the suit, the brothers have executed a sale deed and claim that their sisters authorized them to do so. The dispute between the brothers and the sisters requires limited adjudication, whether the property was bequeathed by the father as alleged or not. By allowing impleadment of the petitioners, since the two sisters deny having sold their share to the petitioners, the dispute which would require adjudication would be whether the two sisters sold their share to the petitioners and whether petitioner no.1 breached the trust and confidence under which the power of attorney was executed by the two sisters in his favour.

21. Petitioners are strangers to the family of the original

litigating parties. The original litigating parties were fighting on the issue of succession. Petitioners claim a title to the property predicating a claim on sale deeds executed by the two sisters in their favour. Petitioners have an independent cause to seek partition of the property, predicating a claim on the sale deeds purportedly executed by the two sisters in their favour.

22. The petition is accordingly dismissed.

23. No costs.

May 7, 2005 PRADEEP NANDRAJOG, J.
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